

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 16-21206 FC 04

JOHN MONACO,

Petitioner,

vs

 ORIGINAL

JAMES ERIC MCDONOUGH,

Respondent.

_____/

Miami, Florida
October 4, 2016

The above-entitled case came on for
hearing before the Honorable Carroll J. Kelly as
Judge of the above-styled court, at the Lawson E.
Thomas Courthouse commencing at 11:08 a.m.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

JOHN MONACO, PRO SE

ON BEHALF OF THE RESPONDENT:

LAW OFFICE OF ALAN GREENSTEIN
DADELAND TOWERS

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BY: ALAN GREENSTEIN, ESQUIRE

ALSO PRESENT:

James Eric McDonough

1 Thereupon --

2 THE COURT: We're here for
3 petitioner, Mr. Monaco, for a restraining
4 order against Mr. McDonough, and would
5 counsel for the respondent state your
6 appearance.

7 MR. GREENSTEIN: Alan Greenstein on
8 behalf of Mr. McDonough.

9 THE COURT: All right. So are both
10 sides ready to proceed? Are you ready to
11 proceed, Mr. Monaco?

12 MR. MONACO: Yes, ma'am.

13 THE COURT: And are you, counsel?

14 MR. GREENSTEIN: Sort of.

15 THE COURT: Sort of?

16 MR. GREENSTEIN: Let me explain.

17 This case was originally set --

18 THE COURT: Weeks ago.

19 MR. GREENSTEIN: Yeah, and I filed a
20 motion for continuance. In the interim,
21 I filed a motion to dissolve the injunction
22 based upon the pleadings, that they don't
23 state forth grounds on which the Court can
24 grant an injunction. Apparently, the Judge
25 was out, and I wasn't able to get an

1 earlier hearing.

2 THE COURT: I wasn't out, I was
3 here, it's just this was set, and so I was
4 trying to get people in.

5 MR. GREENSTEIN: No, no, I
6 understand, but whatever reason, they told
7 me you were out, but it doesn't really
8 matter, we're here today on that.

9 Second of all, Judge, the reason for
10 the continuance originally was that
11 Mr. McDonough has been charged with
12 stalking for essentially the exact same
13 thing that Officer Monaco has brought the
14 injunction; therefore, at this time my
15 client has a right to remain silent, which
16 means that we're not able to defend.

17 Now, I have to say, Judge, the
18 arraignment was set for this morning, and
19 we had to be here, so I don't know what
20 happened in court. So as of today, you
21 were, there's a charge still pending
22 against my client.

23 What I'd like to do, Your Honor, is
24 for the Court to hear my motion to dissolve
25 the injunction. If the Court denies it,

1 grant a continuance until I can find out,
2 A, if charges have been filed, and if they
3 have, I'll report back to the Court,
4 because my client cannot defend himself.

5 THE COURT: We can find out right
6 now whether charges have been filed.

7 MR. GREENSTEIN: You can -- you may.
8 It generally doesn't really go in that
9 quickly, but there is also, even if there's
10 no action -- an action in the case, Judge,
11 I need to talk to the attorney, because
12 they technically have 175 days to charge
13 him even if there's no action. But putting
14 that aside, I think we're jumping the gun.
15 I believe the motion to dissolve should be
16 heard first.

17 THE COURT: Well, this is the way
18 that works.

19 MR. GREENSTEIN: Okay.

20 THE COURT: Since we're here, I'm
21 going to read the allegations in the
22 petition and ask you, Mr. Monaco, is
23 everything true and correct, and if there's
24 anything else you want to add or change.
25 So we'll go through with him speaking about

1 the allegations in his petition and adding
2 or changing anything, then we can take up
3 your motion at that time.

4 MR. GREENSTEIN: Okay. All right.
5 However you want.

6 THE COURT: Okay. So let's start
7 with your petition. So what I'm going to
8 do, sir, I'm going to begin by reading the
9 allegations that you filed and ask you
10 if everything in there is true and correct.

11 Do you state that you -- he's
12 employed, and he's the subject of an
13 ongoing investigation where you who are a
14 Homestead police officer is a witness. The
15 following events occurred as described
16 below:

17 On September 1st he was arrested for
18 cyberstalking and witness tampering after
19 posting derogatory and threatening comments
20 on a website in reference to you. There's
21 an ongoing investigation by the Homestead
22 Police Department.

23 Between August 24th and August 30th,
24 he posted a video of you at a city council
25 meeting where they were citing your home

1 address. The video got posted along with
2 messages stating instructions on how to get
3 to your house and also threatened to post
4 the physical address of your home.

5 The video is also sent to
6 individuals on various websites with
7 instructions or comments in reference to
8 you. He has further threatened you by
9 posting various videos of you going about
10 your daily duties as a police officer. You
11 are afraid of what he's capable of doing as
12 he's been previously arrested and charged
13 with stalking another police officer.
14 You're in fear for your life and safety,
15 and you're seeking a court order to keep
16 him away.

17 Is all of that true and correct?

18 MR. MONACO: Yes, ma'am.

19 THE COURT: All right. What else
20 would you like to tell me if anything?

21 MR. MONACO: There is -- with the
22 ongoing investigation there is -- since the
23 pre-file conference, I have been told other
24 information, and as counsel said, I don't
25 think it's right if he doesn't have that

1 knowledge of that information.

2 THE COURT: I don't know what that
3 means.

4 MR. MONACO: Ma'am, I don't think
5 it's right for us to be continuing with the
6 injunction right now. I would ask, myself,
7 for a continuance, because the stalking
8 case is still going, and there's stuff that
9 I need to tell you, that's why I have the
10 lead detective here in the case, that
11 he hasn't been told yet, and I don't
12 believe you've had discovery yet.

13 MR. GREENSTEIN: No.

14 MR. MONACO: And I don't think
15 it would be proper for me to continue and
16 then bring out the -- some of the elements
17 of the crime that was in the stalking in
18 your courtroom.

19 THE COURT: I'm just -- so you're
20 asking for a continuance?

21 MR. MONACO: Yes, ma'am.

22 THE COURT: Based on the fact that
23 there is evidence that you don't want to
24 discuss here today, because he hasn't been
25 aware of it yet, he hasn't been made aware

1 of it yet?

2 MR. MONACO: I don't believe they've
3 had discovery in that case yet, and I don't
4 believe that -- I don't believe that
5 they've had discovery in the case yet, and
6 there's certain things in that case that
7 I need to tell you.

8 THE COURT: And why can't you tell
9 me that today?

10 MR. MONACO: Because then it would
11 be like discovery today.

12 THE COURT: Is there a problem with
13 discovery today?

14 MR. MONACO: Not in my opinion, but
15 I don't -- I don't know if -- how counsel
16 would feel.

17 THE COURT: Well, I can always grant
18 him a continuance if he would want a
19 continuance if it's discovery that you're
20 receiving right here today. You following
21 me?

22 MR. MONACO: Yes, ma'am.

23 MR. GREENSTEIN: Apparently, there's
24 something that -- Judge, obviously, I'm in
25 the dark.

1 THE COURT: Well, that makes two of
2 us, but that's why we have a hearing, so
3 that we can --

4 MR. MONACO: I'll clear it up the
5 best I can, Your Honor. There is an
6 undercover officer that there were phone
7 calls made between the respondent and the
8 undercover officer that are taped, and
9 I believe that counsel is entitled to that.

10 THE COURT: Okay.

11 MR. MONACO: I don't feel like --
12 I feel it's part of my case here for my
13 reason for getting a restraining order, but
14 I think he needs to be made aware of it.

15 THE COURT: Well, I get that, so
16 don't you worry about his due process
17 rights. That's for me and his attorney to
18 worry about his due process rights. You're
19 here seeking relief from the Court.

20 MR. MONACO: Correct and a temporary
21 restraining --

22 THE COURT: And so my question is
23 you asked for a continuance, and if the
24 ground is because you're worried about his
25 due process rights, we'll deal with that,

1 and if they want a continuance to protect
2 his due process right, we'll grant that.
3 All right?

4 MR. MONACO: Okay. Yes, ma'am.

5 THE COURT: So other than that, are
6 you ready to proceed with your case today
7 and to tell me what you'd like to tell me
8 and present evidence?

9 MR. MONACO: Yes, ma'am.

10 THE COURT: Okay. So why don't you
11 tell me what else you'd like to tell me.
12 First of all, you said that all of that was
13 true and correct, correct?

14 MR. MONACO: Correct.

15 THE COURT: And what else would you
16 like to tell me?

17 MR. MONACO: That the respondent has
18 a stalking past of officers. He's been
19 arrested for stalking another officer. In
20 addition, there is some stalking behavior
21 with another Homestead officer named John
22 Frank. Like I said, there's the undercover
23 contact that was made that has the taped
24 phone call.

25 I really don't -- you want me to go

1 into that, Your Honor, into the content of
2 that?

3 THE COURT: It's your case. You're
4 here seeking a restraining order against
5 someone, and right now what you have in
6 your petition is that basically he posted a
7 video of you at a city council meeting
8 where you recited your home address.

9 MR. MONACO: Right.

10 THE COURT: And that he also
11 threatened you by posting other videos
12 about you going about your daily duties as
13 a police officer.

14 MR. MONACO: Okay. I'll --

15 THE COURT: So those are the two
16 allegations in your petition, and so you
17 said those were both true, and I'm asking
18 is there anything else other you want to
19 tell me?

20 MR. MONACO: There's also a UC
21 contact where there's a taped phone call.

22 THE COURT: A what contact?

23 MR. MONACO: An undercover officer
24 contact.

25 THE COURT: Okay.

1 MR. MONACO: In which there was a
2 taped phone call where the respondent
3 stated that he hired a PI to follow me.
4 He told the undercover officer to go to my
5 residence, take photos of it and get photos
6 of my tags and vehicle numbers.

7 He gave surveillance instructions to
8 the undercover officer, told the undercover
9 officer I'm a bad guy, and I need to go
10 down. He sent the undercover officer the
11 video from the YouTube which I give my home
12 address out.

13 The respondent has shown a pattern
14 of behavior of hatred toward law
15 enforcement officers. The harassment of me
16 has only stopped since the temporary
17 injunction has been served.

18 I have no idea of his motivation or
19 his capability, and it brings up severe
20 concerns of the safety of my family and
21 myself, and I'm asking for the Court to
22 continue the injunction until such time as
23 you see fit.

24 THE COURT: Well, let me ask you
25 this question, so basically what you're

1 saying is that he was at a city council
2 meeting where you were at the city council
3 meeting --

4 MR. MONACO: Correct.

5 THE COURT: -- and he videotaped
6 you.

7 MR. MONACO: No, ma'am, the council
8 meeting is videotaped and put on YouTube.
9 He took an excerpt.

10 THE COURT: So he didn't even
11 videotape you.

12 MR. MONACO: He did not.

13 THE COURT: He just took something
14 that was posted on YouTube and sent it some
15 place else?

16 MR. MONACO: He took an excerpt of
17 it where I give my part of it, and in that
18 part I give my address, and that's what
19 he sent to the undercover officer.

20 THE COURT: And the undercover
21 officer was posing as somebody that was
22 going to do an investigation for him?

23 MR. MONACO: No, that's somebody
24 that was a bad guy.

25 THE COURT: As a bad guy?

1 MR. MONACO: Yes.

2 THE COURT: That was going to follow
3 you?

4 MR. MONACO: Yes.

5 THE COURT: I don't know what a "bad
6 guy" means. What does that mean?

7 MR. MONACO: I -- I don't -- I'm
8 speaking second -- third person,
9 Your Honor, because --

10 THE COURT: Well, sir, I need the
11 evidence, right? So you're speaking third
12 person, and you said "bad guy," and I don't
13 know what that means.

14 MR. MONACO: He posted -- it's my
15 understanding that he posed as an
16 individual that I had -- I'm a K-9 officer,
17 that my dog bit in the past, and that
18 he wanted to get back at me.

19 THE COURT: Okay.

20 MR. MONACO: And therefore contacted
21 him, because he requested contact.

22 THE COURT: Okay. And then other
23 than that -- so he posted -- he posted that
24 video where?

25 MR. MONACO: On YouTube and on LEO

1 Affairs.

2 THE COURT: Legal Affairs. What is
3 Legal Affairs?

4 MR. MONACO: LEO Affairs.

5 THE COURT: LEO Affairs, okay. And
6 LEO Affairs is a --

7 MR. MONACO: It's a blog.

8 THE COURT: It's a blog about police
9 and law enforcement?

10 MR. MONACO: Yes.

11 THE COURT: And who runs that?

12 MR. MONACO: I believe a private
13 entity, I'm not sure.

14 THE COURT: Okay. So and then --
15 okay. So he did that, and then you say
16 he also threatened you by posting various
17 videos of you going about your daily duties
18 as a police officer.

19 MR. MONACO: Correct.

20 THE COURT: Tell me about that.

21 MR. MONACO: On his YouTube, he's
22 got a bunch of YouTube things under him,
23 and on various portion of it, he has me in
24 carrying out my daily duties.

25 THE COURT: So he has a -- he has a

1 YouTube channel or something? I don't know
2 anything about it.

3 MR. MONACO: I don't know anything
4 about the YouTube, Your Honor.

5 THE COURT: Well, where did you see
6 this?

7 MR. MONACO: It was brought to my
8 attention from other officers.

9 THE COURT: But where was this
10 posted, on a YouTube channel?

11 MR. MONACO: No, it was originally
12 posted in LEO Affairs --

13 THE COURT: Okay.

14 MR. MONACO: -- and I believe
15 Facebook, but I don't have Facebook, so
16 I can't attest to that.

17 THE COURT: Okay.

18 MR. MONACO: And that's where
19 I believe it all originated.

20 THE COURT: All right. But you said
21 it's you going about your personal affairs,
22 I don't know what that means. What was
23 posted?

24 MR. MONACO: No, it's all of me in
25 uniform. Just me at city hall, me at -- on

1 the street. There's just different stuff
2 of me in uniform.

3 THE COURT: And where would those
4 videos come from?

5 MR. MONACO: I have no idea.

6 THE COURT: So you're saying he took
7 videos of you?

8 MR. MONACO: I don't know if he did
9 or no, ma'am. There's on his part that
10 he sets up.

11 THE COURT: But what were they
12 exactly? Did you bring them with you?

13 MR. MONACO: No, ma'am.

14 THE COURT: You didn't bring any of
15 the things you're talking about with you
16 today?

17 MR. MONACO: No, ma'am.

18 THE COURT: Why not?

19 MR. MONACO: Well, they're part of
20 the criminal investigation. I don't have
21 access to them. The lead officer does.
22 I'm a victim in the criminal investigation.

23 THE COURT: But you said you could
24 easily look these up on Facebook and other
25 things, right?

1 MR. MONACO: Ma'am, I can't, I don't
2 know how to do that. I don't have
3 Facebook.

4 THE COURT: Let me just state this
5 before we go any further. These
6 allegations don't meet the definition of
7 stalking under Florida law. The fact that
8 he posted or reposted a public meeting
9 where you attended and put that some place
10 like on a LEO blog, that doesn't amount to
11 stalking.

12 There's the whole balance here
13 between free speech and stalking, and for
14 purposes of this injunction, this doesn't
15 amount -- this doesn't amount to stalking
16 under Florida law. It just doesn't meet
17 the criteria for it.

18 MR. MONACO: Okay.

19 THE COURT: That being said, you can
20 follow through on the criminal side however
21 you see fit, and if there's an open
22 criminal case, and I don't know whether
23 it is or not, you need to abide by that
24 stay-away order and not have any contact
25 with him whatsoever and whatever the terms

1 of that order are which I'm not privy to,
2 you understand?

3 MR. MCDONOUGH: Yes, Your Honor.

4 MR. GREENSTEIN: Yes, Your Honor.

5 THE COURT: But your attorney will
6 counsel you on what you should and should
7 not do to make sure that you don't end up
8 in any violation of that order.

9 MR. GREENSTEIN: The bond hearing,
10 Judge, imposed some restrictions, so
11 obviously those will be placed until and
12 if that case is resolved.

13 THE COURT: So whatever those
14 restrictions are, do feel safe with those,
15 sir?

16 MR. MONACO: Yes, ma'am.

17 THE COURT: Okay. Great. So the
18 case will follow through on the criminal
19 track. This case is going to be dismissed
20 without prejudice, which means if at a
21 further time you feel it's necessary to
22 come forward again, you certainly have the
23 right to come and file it, and so your
24 motion is granted.

25 MR. GREENSTEIN: Thank you, Judge.

1 THE COURT: Okay. You're welcome.

2 MR. MONACO: Thank you, your Honor.

3 THE COURT: You're welcome.

4 (Thereupon, the hearing was

5 concluded at 11:22 a.m.)

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CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA :

4 COUNTY OF MIAMI-DADE :

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I, Nicole Walker, shorthand reporter,
do hereby certify that I was authorized to and
did stenographically report the foregoing
proceedings and that the transcript is a true and
complete record of my stenographic notes.

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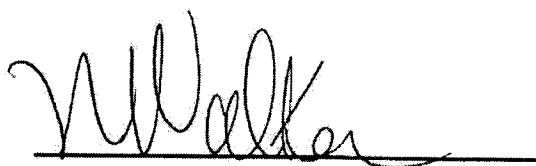
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A handwritten signature in cursive script, appearing to read 'Nicole Walker', is written over a horizontal line.

NICOLE WALKER
Court reporter